IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.589 OF 2005
WITH
CIVIL APPLICATION NO.683 OF 2005

M/s.Herald Engineering & Anr. ..Appellants.

V/s.

Syndicate Bank & Ors. ..Respondents.

Mr.S.S.Patwardhan for appellants.

Mr.Sunil Humbre i/b P.J.Pandit for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 7, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents.

2. This appeal from order takes exception to the Judgment and order passed by the Second Joint Civil Judge, Sr.Division, Nashik dated March 19, 2005 below Exh. 196 in Suit No.158 of 1989. By the said application the appellant prayed for dismissal of the suit under Order 11 Rule 21 of the C.P.Code. The basis on which this relief was sought is that the respondent plaintiffs intentionally failed to comply with the order of the Court passed on 1st January, 2001. The said order was passed on application Exh.

173 for production of the documents from the plaintiff in terms of Order 11 Rule 14 of the C.P.Code which reads as follows.

"ORDER

Whether document is relevant or irrelevant is not the point at this stage for the Plaintiff to determine the status of the documents. Hence the Plaintiff is directed to produce the documents as called for.

sd/-
1.1.2001."

Reliance is then placed on purshis Exh. 175 by the respondents/plaintiffs before the trial Court on the same date i.e. 1st January, 2001 stating that the plaintiffs will not file the document referred to in Exh. 173. This is the basis on which the present application Exh. 196 has been filed on 23rd August, 2002 to dismiss the suit under Order 11 Rule 21 C.P.Code.

3. The first question that arises is whether Rule 21 is available in respect of the order passed by the trial Court on application under Order 11 Rule 14. The application is necessarily for production of documents and not for answering interrogatories and/or for discovery or inspection of documents. Whereas rule 21 can be invoked when the parties fail

to comply with any order, to answer interrogatories, or for discovery or inspection of documents. This is the limited scope of Rule 21. Thus understood, Rule 21 is not attracted in the fact situation of the present case.

4. Assuming that the Rule 21 could be invoked, I find substance in the argument of the respondents that such order should be passed only in the exceptional cases. Reliance is rightly placed on the decision of the Supreme Court in the case of **Babbar Sewing Machine Company V/s. Trilok Nath Mahajan reported in 1978 S.C. 1436** to buttress this contention. In this decision, it is observed that it is well settled that the stringent provisions of Order XI rule 21 should be applied only in extreme cases, where it is a case of contumacy on the part of the defendant or a wilful attempt to disregard the order of the court is established. In the present case, the argument of the appellant is that the respondents/plaintiffs have shown disregard to the order passed on 1st January, 2001 by filing purshis on the same day, making it clear that plaintiffs will not file documents referred to in Exh. 173. This submission however, overlooks the circumstances, in which the respondents/plaintiffs filed purshis before

the trial Court. Moreover, in the event documents referred to in Exh. 173 were eventually not produced by the plaintiffs at the appropriate stage, the trial Court can always draw adverse inference against the party(plaintiffs), if so advised. If that is the course available to the trial Court, it will be inappropriate to invoke the extreme remedy of dismissing the suit in exercise of power under Order XI Rule 21 of the C.P.Code.

5. Counsel for the Appellants relying on Bombay amendment in Order 39, Rule 11 would contend that as it is a case of refusing to obey the order passed by the Court dated 1st January, 2001, the Court should strike out defence of the respondents/plaitniffs. It is not possible to accept this submission. Rule 11 applies in cases where the order is passed under order 39 and breach thereof is committed. Rule 11 cannot be invoked to dismiss the suit for non-production of documents in terms of the order under Order XI Rule 14. Taking any view of the matter no interference is warranted. Hence the appeal should fail. The same is dismissed.

6. Civil application disposed of accordingly.